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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,320	02/06/2001	Donald Penner	MSU 4.1-546	4169

21036 7590 08/22/2003

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OKEMOS, MI 48864

EXAMINER
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PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 08/22/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/777,320

**Applicant(s)**

PENNER ET AL.

**Examiner**

Alton N. Pryor

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 16 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1,3,4,7,12,-14,18,20-25,27,40-44,55,56,109,110 is/are pending in the application.
- 4a) Of the above claim(s) 15-17,29-39,57-65 and 71-108 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) 4,7,12,22,23,28,43,44 and 56 is/are objected to.
- 8) ☐ Claim(s) 110 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |                                                                                              |                                                                             |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

I. Rejection of claims 1,3,13,14,20,21,24-26,40,41,55, 109 under 35 USC 103(a) will be maintained over Hoskaka and Dahmen on record for reasons on record and reasons as follows. Claims 27 and 45 are added to this rejection. Applicant argues that formulations of claims 1,24,25,109 clearly include formulations which do not remain on the crop; this prevents injury of the plant. Applicant's composition claims recite that instant composition bounces off the crop, preventing plant injury. In a claim to a composition, the components of the composition are significant. Therefore, in a claim to a composition, Examiner gives no weight to the composition bouncing off of a plant. The fact is that Dahamen and Hoskaka suggests the instant composition comprising isoxaflutole plus organosilicon which reads on instant invention.

II. Rejection of claims 1,3,20,21,24-26,109 under 35 USC 103(a) will be maintained over Hausmann on record for reasons on record and reasons as follows. Claims 27,55 are added to this rejection. Applicant argues that Hausmann discloses a silicone oil as a spreading agent for the herbicide. Applicant argues that this is opposite the result to be achieved by Applicant's method / composition; wherein, Applicant's composition bounces off of plant. See Examiner's arguments in I above.

III. Duplicate claim warning for claims 1, 24 will not be maintained in light of amendment filed 6/16/03. Claims 1,24 have been amended to avoid duplicity.

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***Other Matters***

Claim 18 depends from withdrawn claim 17.

***Claim Objection / Allowable Subject Matter***

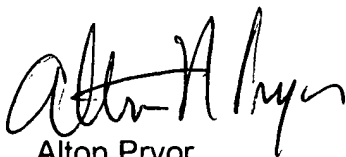
Claims 4,7,12,22,23,28,43,44,56 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 110 is allowable. The prior art does not teach or suggest the instant invention comprising the sodium methyl silicate (claims 7, 110), a monosaccharide (claim 44) or safeners (claim 4).

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 703 308-4691. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.



Alton Pryor  
Patent Examiner  
AU 1616